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In the Supreme Court of the United States

OCTOBER TERM, 1968

PURITAN CHURCH BUILDING FUND, HARRISON PARKER AND EDITH S. PARKER, TRUSTEES, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

CARLETON D. KENT,
Assistant to the Attorney General,

L. HEBERT RUTH,
CHARLES B. E. FRIEDMAN,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 494

PURITAN CHURCH BUILDING FUND, HARRISON PARKER AND EDITH S. PARKER, TRUSTEES, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The District Court did not write an opinion. The order of the District Court dismissing the complaint (R. 11-12)[1] is not reported. The *per curiam* opinion of the Court of Appeals is reported at 256 F. 2d 888. (R. 15-16.)

JURISDICTION

The judgment of the Court of Appeals was entered on June 12, 1958. (R. 17.) Petitioner's mo-

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[1] Record references are to the record filed in this Court.

tion for leave to file petition for mandamus, motion to disqualify, and petition for a writ of mandamus to the United States Court of Appeals for the District of Columbia were denied by this Court on October 13, 1958. Petitioner's time within which to file a petition for a writ of certiorari was extended to November 9, 1958. The petition for a writ of certiorari was filed on November 5, 1958. Jurisdiction is conferred on this Court by 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

Was the court below correct in affirming the dismissal of this action by the District Court on the ground of *res judicata?*

STATEMENT

In 1951, in consolidated proceedings, the Tax Court decided that the Puritan Church—The Church of America was liable for income tax for the period October 14, 1945, to December 31, 1945, and for the years 1946 and 1947 (T. C. Docket No. 23814). The deficiencies were determined. In the consolidated companion case (T.C. Docket No. 25701), the Tax Court also decided that the Puritan Church Building Fund (which is the taxpayer here) was liable as a transferee for the deficiencies of the Puritan Church—The Church of America. The memorandum findings of fact and opinion of the Tax Court, dated May 22, 1951, are reported in 1951 P-H T.C. Memorandum Decisions, par. 51,151. Petitions for rehearing were denied on June 22, 1951, and September 27, 1951. The decisions of the Tax

Court were reviewed by the Court of Appeals for the District of Columbia Circuit which affirmed the Tax Court decisions in *Puritan Church of America* v. *Commissioner*, 209 F. 2d 306. A petition for rehearing *en banc* was denied by the Court of Appeals on December 11, 1953. This Court denied certiorari (347 U.S. 975). A motion to vacate its decision was filed in the Tax Court and was denied by the Tax Court on June 23, 1954. On March 1, 1955, the Court of Appeals for the District of Columbia Circuit dismissed the appeal from that denial. This Court denied certiorari (350 U.S. 810), and a rehearing was denied (350 U.S. 890).

In the complaint filed in the District Court which initiated the present suit, petitioner alleged that it was entitled to a refund as a result of the Tax Court's previous decisions. (R. 1-4.) The District Court dismissed the complaint on the ground that the matters raised by the complaint had been decided by the Tax Court in the cited case, its decision affirmed by the Court of Appeals for the District of Columbia Circuit, and certiorari denied by this Court. (R. 11-12.) In a *per curiam* opinion, the Court of Appeals for the District of Columbia Circuit affirmed the District Court's order stating, "The District Court correctly dismissed this action on the ground of *res judicata*," citing *Puritan Church of America* v. *Commissioner*, 93 U.S. App. D.C. 129, 209 F. 2d 306, certiorari denied, 347 U.S. 975. (R. 15-16.) Petitioner's motion for leave to file petition for mandamus, motion to disqualify, and petition for a writ of mandamus to the United States Court of

Appeals for the District of Columbia (No. 320 Misc., October Term, 1958) were denied by this Court on October 13, 1958.

ARGUMENT

The decision below is correct, there are no conflicting decisions and no question of general importance is presented.

This suit involves the same parties or their privies[2] and the same taxable years, *i.e.*, a part of 1945 and the years 1946 and 1947, which were involved in the proceedings cited by the courts below, namely, *Puritan Church Building Fund, Anita P. Bird and Edith S. Parker, Trustees* v. *Commissioner* (T. C. Docket No. 25701), decided May 22, 1951 (1951 P-H T.C. Memorandum Decisions, par. 51,151), affirmed, 209 F. 2d 306 (C.A. D.C.), certiorari denied, 347 U.S. 975. See also the denial by this Court of a petition for certiorari from the dismissal by the Court of Appeals for the District of Columbia Circuit of taxpayer's appeal from an order of the Tax Court denying a motion to vacate its previous decision (350 U.S. 810, rehearing denied, 350 U.S. 890). Plainly there is identity of cause of action and of parties between the instant case and the cited case.

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[2] That this suit is between the same parties is plain Harrison Parker is a successor trustee to Anita Bird who was a party in the prior proceedings. It is clear that the trustees involved are in privity. See *Stacy* v. *Thrasher*, 6 How. 43, 59-60. It is equally clear that the original proceeding against the Commissioner is considered a suit against the United States for purposes of the doctrine of *res judicata*. *Tait* v. *Western Md. Ry. Co.*, 289 U.S. 620.

and the rule of *res judicata* applies.[3] Contrary to taxpayer's contention (Pet. 3-15), the earlier decision, which was the result of protracted litigation, plainly put an end to any claim that either the Puritan Church—The Church of America or the taxpayer here was exempt from income taxation during the taxable years as a religious organization. The detailed findings made by the Tax Court and its careful opinion (1951 P-H T.C. Memorandum Decisions, par. 51,151) to which the court below referred

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[3] The assertion in the complaint here that taxpayer is entitled to a refund (R. 1-9) is based upon a misconstruction of the Tax Court's decision. The net deficiency determined by the Tax Court to be due from taxpayer for 1945, 1946 and 1947 was $17,059.09. This is the net balance which the Tax Court found remaining after applying $106,598.24, the proceeds of a jeopardy assessment, to taxpayer's total tax liability for those years. The Tax Court's decision in Docket No. 25701, based on this computation which was made after objection filed by taxpayer and hearing held, reads as follows:

* * * *

> Now, therefore, it is
>
> Ordered and decided: That there are overpayments in income tax, 25% penalty, and 50% penalty for the period October 14, 1945, to December 31, 1945, due petitioner as transferee of Puritan Church—The Church of America, in the amounts of $1,159.00, $289.75 and $579.50, respectively; and that there are overpayments in income tax, 25% penalty, and 50% penalty for the calendar year 1946 in the amounts of $13,132.22, $3,283.05 and $6,566.11, respectively, all of which amounts were paid after the mailing of the notice of deficiency; and there are liabilities on the part of this petitioner as transferee of Puritan Church—The Church of America in income tax of $24,039.27, a 25% penalty of $6,009.82, and a 50% penalty of $12,019.64 for the calendar year 1947, together with interest thereon as provided by law.

(209 F. 2d 306) in affirming the Tax Court make this abundantly clear.

The taxpayer's assertion that the appointment of an Illinois state court receiver for the Puritan Church—The Church of America deprived the Tax Court of jurisdiction in the earlier proceeding is without merit. (Pet. 15-17.) Taxpayer asserts that the receiver was appointed three days before it filed its petition in the Tax Court in Docket No. 25701, and referring to Section 274 of the Internal Revenue Code of 1939 and Section 6871 of the Internal Revenue Code of 1954 contends that the Tax Court was without jurisdiction to entertain this taxpayer's petition for redetermination of the tax. (Pet. 15-16.) On its face this contention is without merit since (1) this taxpayer, Puritan Church Building Fund, was not a party to the proceeding in Illinois, (2) no receiver had been appointed for the Building Fund or its trustees, (3) the receiver for Puritan Church did not take action to obtain possession of this taxpayer's property, and (4) had receivership proceedings been brought the District Director's tax claim would, in any event, have had priority over the claims of general creditors. See Sections 3670, 3671 and 3672 of the Internal Revenue Code of 1939; *United States* v. *Security Tr. & Sav. Bk.*, 340 U.S. 47; *Reinecke* v. *General Combustion Co.*, 237 Ill. App. 404.

In addition, the courts below were plainly correct in ruling that the prior litigation also settled this issue. The income tax liability of a taxpayer for any one year is a single cause of action. The earlier judgment put an end not only to every matter or

issue which was raised and passed upon to sustain or defeat each cause of action litigated, but also put an end to all matters or issues based on each cause of action which might have been raised, but were not. *Tait* v. *Western Md. Ry. Co.*, 289 U.S. 620, 623; *Commissioner* v. *Sunnen*, 333 U.S. 591, 597. See also *Chicot County Dist.* v. *Bank*, 308 U.S. 371, 377-378, and *Jackson* v. *Irving Trust Co.*, 311 U.S. 494, 503. In the case of Tax Court proceedings, Congress has afforded statutory support for this principle. Internal Revenue Code of 1939, Section 322(c), and Internal Revenue Code of 1954, Section 6512(a).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

I. HENRY KUTZ,
CHARLES B. E. FREEMAN,
Attorneys.

DECEMBER, 1958.

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